

Fire Public Safety Personnel Retirement Board

Goodyear City Hall, Room 230

190 North Litchfield Road

Goodyear, AZ 85338



Thursday, November 18, 2021

8:00 a.m.

Meeting Minutes

CALL TO ORDER

Chair Kaino called the meeting to order at 8:25 a.m.

ROLL CALL

Present: Chairman Laura Kaino; Vice Chair Michael Stewart; Boardmember Patrick Doyle;
Boardmember Jay Mathias; Boardmember Liam Tierney

Staff Board Secretary Darcie McCracken; Board Attorney Lesli Sorensen; City Clerk
Present: Specialist Jasmine Pernicano; Benefits Analyst Chanda Washington

Attendees: Kristen Wunsch, Court Reporter; Michael Bort, Applicant; Thomas Griffin,
Applicant's Attorney

Vice Chair Michael Stewart and Boardmember Jay Mathias participated via
teleconference.

PUBLIC COMMENTS

There were no public comments.

BUSINESS

1. Approve Minutes

MOTION BY Boardmember Liam Tierney, **SECONDED BY** Boardmember Patrick Doyle to APPROVE the draft minutes of the August 26, 2021 Fire Public Safety Personnel Retirement Board meeting. The motion carried by the following vote:

AYE: Chairman Laura Kaino, Vice Chair Michael Stewart, Boardmember Patrick Doyle,
Boardmember Jay Mathias, Boardmember Liam Tierney

Passed - Unanimously

2. Rehearing and Possible Action on the Application for Accidental Disability - Michael Bort (last heard on April 29, 2021)

Chair Kaino explained the purpose of the re-hearing and gave a brief overview of the case to the Board. She explained that this re-hearing was at the request of the applicant and that Mr. Bort agreed to continue the conversation in open session, to which he and his attorney, Mr. Griffin, confirmed. Chair Kaino explained that on April 29, 2021, the Board reviewed the Independent Medical Examiner's (IME) report and voted to deny Mr. Bort's accidental disability application based on the IME's determination that the injury occurred prior to the date of membership and that the injury was not incurred in the performance of his duties.

MOTION BY Boardmember Patrick Doyle, **SECONDED BY** Boardmember Liam Tierney to CONVENE in Executive Session to obtain legal advice at 8:30 a.m.

AYE: Chairman Laura Kaino, Vice Chair Michael Stewart, Boardmember Patrick Doyle, Boardmember Jay Mathias, Boardmember Liam Tierney

Passed - Unanimously

The meeting reconvened in Open Session at 8:58 a.m. with the applicant and the applicant's representative present.

Thomas Griffin, representing the applicant, acknowledged that the Board cannot grant the disability with the current IME report. He expressed concerns with the IME report and requested that the Board send Mr. Bort to a second IME for another opinion.

Board Attorney Lesli Sorensen requested clarification to authenticate the hand-written document from the CORE Institute provided to the Board as part of the supplemental rehearing letter. Mr. Griffin responded that the document was the written opinion of Dr. Chiang, who testified at Mr. Bort's Worker's Compensation hearing and that it was prepared after denial of the benefit in April and before today's rehearing.

In response to the pre-existing condition, Mr. Bort clarified that he indicated on his initial form at the time of hire that he had a femur fracture. Ms. Sorensen clarified that the Board was not in possession of that document.

Board discussion ensued regarding Mr. Bort's Tier 1 physical exams. Mr. Bort explained that he did not exhibit any pain or arthritis until the 2016 incident. He recalled being placed on light-duty and that, although he was able to perform at a Tier 1 level, he experienced pain after the physical exam. Mr. Bort expressed concerns with his experience with the Independent Medical Examiner in comparison to the service he received from the Worker's Compensation IMEs.

Ms. Sorensen noted that it is not the Board's usual practice to send applicants for a second IME. Mr. Griffin referenced Dr. Chiang's opinion in the worker's compensation case that he opined that it was not a pre-existing condition and that the issue aggravated the arthritis. Mr. Griffin further explained that they felt there was enough medical evidence that another IME could have a different opinion similar to Dr. Chiang. Ms. Sorensen advised that the statutory criteria for PSPRS is different from Worker's Compensation awards and read aloud Arizona Revised Statute 38-844(D) concerning the qualifications for accidental disability.

The Board convened into Executive Session to obtain legal advice at 9:38 a.m.

The Board reconvened in Open Session at 9:54 a.m.

MOTION BY Boardmember Patrick Doyle, **SECONDED BY** Boardmember Liam Tierney to UPHOLD the denial of Michael Bort's accidental disability application. The motion carried by the following vote:

AYE: Chairman Laura Kaino, Vice Chair Michael Stewart, Boardmember Patrick Doyle, Boardmember Jay Mathias, Boardmember Liam Tierney

Passed - Unanimously

EXECUTIVE SESSION

Per ARS §38-431.03, upon a public majority vote of the members constituting a quorum, the Goodyear Fire Public Safety Personnel Retirement Board may hold an executive session for any item on the agenda.

[See times noted above.]

SEPARATIONS

There are no separations to report.

INFORMATION ITEMS

Board Secretary Darcie McCracken provided a brief update regarding new laws taking effect January 1, 2022.

Board Attorney Sorensen explained that their law firm has submitted comments in regard to the model rules for local boards and anticipates that changes will be made based on their feedback.

NEXT MEETING

The next meeting of the Fire Public Safety Personnel Retirement Board is tentatively scheduled for Thursday, December 9, 2021.

ADJOURNMENT

There being no further business to discuss, Chairman Kaino adjourned the meeting at 9:54 a.m.

Respectfully Submitted by:

Darcie McCracken, Board Secretary

Laura Kaino, Chairman

Date: _____

